UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,201	05/29/2001	Charles Young	30454-1001	7863

5179 7590 06/17/2005

PEACOCK MYERS AND ADAMS P C
P O BOX 26927
ALBUQUERQUE, NM 871256927

EXAMINER	
WALLACE, SCOTT A	

ART UNIT	PAPER NUMBER
2675	

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/870,201	YOUNG, CHARLES	
	Examiner	Art Unit	
	Scott Wallace	2675	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 March 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,8-16 and 18-34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *8-10,18-20 and 29-34* is/are allowed.

6)☒ Claim(s) *1-4,6,11-14 and 16* is/are rejected.

7)☒ Claim(s) *5,15 and 21-28* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Response to Arguments

1. Applicant's arguments, see affidavit, filed 03/17/2005, with respect to claims 1-3, 6, 1-13, 16, 21-22 and 25-26 have been fully considered and are persuasive. The Final rejection has been withdrawn.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1 and 11-12 are rejected under 35 U.S.C. 102(a) as being anticipated by Cyber-Journal of Sport Marketing "An Analysis of In-game Advertising for NCAA Baskerball".

4. As per claims 1 and 11, Cyber-Journal discloses an automated method of collecting audience recognition information concerning a video presentation (page 3, paragraph 1), the method comprising the steps of: displaying an entire video presentation to a plurality of subjects (page 3 paragraph 3); subsequently inquiring of each of the subjects by computer (page 4 paragraph 4, survey instrument) whether each of a plurality of still images (imbedded sponsor mentions) obtained from the video presentation are recognized by each of the subjects (page 3 paragraphs 1 and 2), the inquiring step taking place after place after the displaying step (page 3 paragraph 3); and for each of the still images, tabulating a percentage of the subjects reporting recognition by remembrance of the still image in the inquiring step (page 4 paragraph 4).

5. As per claim 12, Cyber-Journal discloses wherein the displaying and inquiring apparatus comprise a computer local to each subject (page 4 paragraph 4, survey instrument).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 2-4, 6, 13-14, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cyber-Journal of Sport Marketing "An Analysis of In-game Advertising for NCAA Baskerball" in view of Waechter et al., U.S. Patent No. 4,943,963.

8. As per claim 2, Cyber-Journal discloses wherein the displaying and inquiring steps are performed on a computer local to each subject (page 4 paragraph 4). However, Cyber-Journal does not disclose wherein the tabulating step is performed on a central computer networked to each local computer. This is disclosed in Waechter et al in column 1 lines 40-67 and column 2 lines 1-30. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the system of Waechter with the system of Cyber-Journal. Cyber-Journal surveying a group of people and determining statistics. It would be obvious to use a central computer to tabulate the statistics because this would allow cheaper surveying equipment to be used for local means.

9. As per claim 3, Although Cyber-journal does not specifically disclose using the internet, it does disclose using a local area network. It would have been obvious at the time the invention was made to use the internet as the network with the system of Cyber-journal because this would allow the results to be seen by more people and have more subjects participate.

10. As per claims 4 and 14, Cyber-Journal discloses an automated method of collecting audience recognition information concerning a video or graphic presentation (page 3 paragraph

1), the method comprising the steps of: displaying a video or graphic presentation to a plurality of subjects (page 3 paragraph 3); after the displaying step, obtaining by an apparatus local to each subject audience recognition information concerning the presentation from each of the subjects (page 4 paragraph 4), tabulating the results of the obtaining step for all subjects (page 4 paragraph 4). However, Cyber-Journal does not disclose communicating results of the obtaining step via a network to a central computer. This is disclosed in Waechter et al in column 1 lines 40-67 and column 2 lines 1-30. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the system of Waechter with the system of Cyber-Journal. Cyber-Journal surveying a group of people and determining statistics. It would be obvious to use a central computer to tabulate the statistics because this would allow cheaper surveying equipment to be used for local means.

11. As per claims 6 and 16, Cyber-Journal discloses wherein the obtaining step comprises inquiring of each of the subjects whether each of a plurality of still images from a video presentation are recognized by each of the subjects (page 3 paragraph 1 and 3), and the tabulating step comprises tabulating a percentage of the subjects reporting recognition of each of the images in the inquiring step (page 4 paragraph 4).

12. As per claim 13, Cyber-Journal does not disclose communicating results generated by the inquiring apparatus to a central computer over the internet. This is disclosed in Waechter et al in column 1 lines 40-67 and column 2 lines 1-30. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the system of Waechter with the system of Cyber-Journal. Cyber-Journal surveying a group of people and determining statistics. It would be obvious to use a central computer to tabulate the statistics because this would allow cheaper surveying equipment to be used for local means. Although Cyber-journal does not specifically disclose using the internet, it does disclose using a local area network. It would have been obvious at the time the invention was made to use the internet as the network with the system of Cyber-journal because this would allow the results to be seen by more people and have more subjects participate.

Allowable Subject Matter

13. Claims 5, 15, 23-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

1. Claims 8-10, 18-20 and 29-34 are allowed.

2. The following is a statement of reasons for the indication of allowable subject matter: Prior art of reference fails to disclose after the generating step, creating an abbreviated presentation containing a subset of the images and displaying to a second plurality of subjects. Also prior art of reference does not disclose wherein a brightness of portions of the presentation are determined by results of the tabulating step.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Wallace whose telephone number is 571-272-7652. The examiner can normally be reached on Mon-Fri 9-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sumati Lefkowitz can be reached on 571-272-3638. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott Wallace
Examiner
Art Unit 2675

***

SUMATI LEFKOWITZ
SUPERVISORY PATENT EXAMINER